

1996

# State of Utah v. Conrad Sterkel, William A. Pickett : Amicus Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Christine F. Soltis; Assistant Attorney General; Norman K. Johnson; Assistant Attorney General; Craig C. Halls; San Juan County Attorney.

R. Dennis Ickles; Parry Murray Ward & Lawrence; Attorneys for Defendants/Appellants .

---

## Recommended Citation

Legal Brief, *State of Utah v. Conrad Sterkel, William A. Pickett*, No. 960384 (Utah Court of Appeals, 1996).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/309](https://digitalcommons.law.byu.edu/byu_ca2/309)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH  
DOCUMENT  
K F U  
50

R. Dennis Ickes (1615)  
Parry Murray & Ward  
1270 Eaglegate Plaza  
60 East South Temple  
Salt Lake City, Utah 84111  
Attorneys for Defendants/Appellants

---

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	Case No. 960384 - CA
	)	
CONRAD STERKEL and WILLIAM A.	)	Priority No. 2
PICKETT,	)	
	)	
Defendants/Appellants.	)	

---

AMICUS CURIAE BRIEF  
BY THE STATE OF ARIZONA  
IN SUPPORT OF  
THE STATE OF UTAH

---

Appeal from the Seventh Judicial District Court In and For  
San Juan County, State of Utah

The Honorable Lyle R. Anderson

---

GRANT WOODS, ATTORNEY GENERAL  
Jay R. Adkins, Assistant Attorney General,  
State Bar of Arizona #002477  
Office of the Arizona Attorney General  
Environmental Enforcement Section  
1275 W. Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 542-7781  
Facsimile: (602) 542-4084  
Attorneys for Amicus Curiae, State of Arizona

R. Dennis Ickes (1615)  
Parry Murray & Ward  
1270 Eaglegate Plaza  
60 East South Temple  
Salt Lake City, Utah 84111  
Attorneys for Defendants/Appellants

## TABLE OF CONTENTS

	<u>Page</u>
<u>THE INTEREST OF AMICUS CURIAE</u> . . . . .	1
<u>STATEMENT OF THE CASE</u> . . . . .	3
<u>STATEMENT OF ADDITIONAL ISSUES PRESENTED FOR REVIEW</u> . . . . .	4
<u>SUMMARY OF ARGUMENT</u> . . . . .	4
<u>ARGUMENT</u> . . . . .	5
I. BACKGROUND FACTS . . . . .	5
II. THE STATES OF ARIZONA AND UTAH HAVE AUTHORITY TO REGULATE RECREATIONAL BOATING WITHIN THE GLEN CANYON NATIONAL RECREATION AREA, AND THOSE STATES HAVE NOT BEEN PREEMPTED BY THE FEDERAL GOVERNMENT FROM DOING SO . . . .	6
A. <u>Congress Made No Express Preemption Statement</u> . . . .	6
B. <u>No Conflict Exists Between State and Federal Statutes and Regulations In The GCNRA</u> . . . .	10
C. <u>The Federal Government Has Not Occupied The Field Of Interstate Commerce Within The GCNRA</u> . . . .	12
III. APPELELANTS HAVE FAILED TO DEMONSTRATE THAT UTAH'S BOAT REGISTRATION STATUTE VIOLATES THE INTERSTATE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION . . . . .	14
A. <u>Appellants Have Failed To Demonstrate That The Utah Tax Impermissibly Interferes With Interstate Commerce</u> . . . . .	14
B. <u>Appellants Have Not Demonstrated That Utah's Tax Is Clearly Excessive In Relation To Local Benefits</u> . . . . .	16
CONCLUSION . . . . .	17
APPENDIX . . . . .	20

### Exhibit A

A.R.S. §§ 5-321-324 (Registration and Taxation of  
Watercraft

# TABLE OF CITATIONS

<u>CASES:</u>	<u>PAGE</u>
<i>American Can Co. v. Oregon Liquor Control Comm'n</i> , 15 Or. App. 618, 517 P.2d 691 (1974) . . . . .	12
<i>Arkansas Elec. Co-op. Corp. v. Arkansas Pub. Service Comm'n</i> , 461 U.S. 375 (1983) . . . . .	15
<i>Austin v. State of Tennessee</i> , 179 U.S. 343 (1900) . . . . .	13
<i>Bibb v. Navajo Freight Lines</i> , 359 U.S. 520 (1959) . . . . .	15
<i>Commonwealth Edison Co. v. Montana</i> , 453 U.S. 609 (1981) . . . . .	15
<i>Exxon Corp. v. Governor of Maryland</i> , 437 U.S. 609 (1981) . . . . .	15
<i>Gibbons v. Ogden</i> , 22 U.S. 1 (1824) . . . . .	7
<i>Gilman v. City of Philadelphia</i> , 70 U.S. 713 (1865) . . . . .	7
<i>Harman v. City of Chicago</i> , 147 U.S. 396 (1893) . . . . .	7
<i>Head v. New Mexico Bd. of Examiners in Optometry</i> , 374 U.S. 424 (1963) . . . . .	12
<i>Huron Portland Cement Co. v. City of Detroit, Michigan</i> , 362 U.S. 440 (1960) . . . . .	12
<i>Kansas City v. Seaman</i> , 99 Kan. 143, 160 P. 1139 (1916) . . . . .	13
<i>Kelly v. State of Washington, ex rel. Foss Co.</i> , 302 U.S. 1 (1937) . . . . .	7
<i>Minnesota v. Clover Leaf Creamery Co.</i> , 449 U.S. 456 (1981) . . . . .	15
<i>Moran v. City of New Orleans</i> , 112 U.S. 69 (1884) . . . . .	7
<i>Morgan v. Parham</i> , 83 U.S. 471 (1872) . . . . .	7

<i>Pike v. Bruce Church, Inc.</i> , 397 U.S. 137 (1970) . . . . .	15
<i>Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.</i> , 485 U.S. 495 (1988) . . . . .	7
<i>Riis v. Commonwealth</i> , 418 S.W.2d 396 (Ky. 1967) . . . . .	12
<i>Sierra Club v. Hodel</i> , 675 F. Supp. 594 (D. Utah 1987) . . . . .	1
<i>Smith v. Maryland</i> , 59 U.S. 71 (1855) . . . . .	7
<i>Smith v. Turner</i> , 48 U.S. 283 (La. 1849) . . . . .	7
<i>State v. Nettleton</i> , 367 So.2d 755 (La. 1979) . . . . .	8, 9
<i>Wilson v. McNamee</i> , 102 U.S. 572 (1880) . . . . .	7

#### CONSTITUTIONS:

Arizona Constitution art. 9, § 16 . . . . .	3
United States Constitution art. 1, § 8 . . . . .	14

#### STATUTES AND CODES:

Arizona Revised Statutes Annotated ("A.R.S.")	
A.R.S. § 5-321 . . . . .	3, 20
A.R.S. § 5-321(A) . . . . .	3, 20
A.R.S. § 5-321(A) (1) . . . . .	4, 20
A.R.S. § 5-321(A) (2) . . . . .	4, 20
A.R.S. § 5-322 . . . . .	3, 20
A.R.S. § 5-322(A) . . . . .	3, 20
46 U.S.C. § 1459 . . . . .	8, 9
46 U.S.C. §§ 4301, et seq. (Federal Boat Safety Act) . . . . .	7, 9, 10, 12

46 U.S.C. § 4302 . . . . .	8
46 U.S.C. § 4306 . . . . .	7, 8
46 U.S.C. § 12102 . . . . .	3
46 U.S.C. § 12301 . . . . .	10
46 U.S.C. § 12302 . . . . .	11
46 U.S.C. § 12307 . . . . .	11, 17
46 U.S.C. §§ 13101, et seq. (Federal Boat Safety Act) . . . . .	9

### THE INTEREST OF THE AMICUS CURIAE

The State of Arizona regulates recreational boating, and many other activities and services on that portion of the Glen Canyon Recreation Area (GCNRA) located within Arizona, just as the State of Utah regulates those activities and services in Utah. The outcome of this appeal, therefore, is likely to influence Arizona.

While the vast majority of Lake Powell and the GCNRA lie within the exterior boundaries of Utah, the remaining portion lies within the boundaries of Arizona. The area within Arizona lies within Coconino County and contains the City of Page, Glen Canyon Dam, Carl Hayden Visitor Center, Wahweap Marina, Lee's Ferry (a 15 mile stretch of the Colorado River below Glen Canyon Dam, and a renowned trout fishery). In 1973, approximately 1.2 million people visited the GCNRA. By 1983, these numbers had increased to two million, with most visitors entering by way of Arizona highways. *Sierra Club v. Hodel*, 675 F.Supp. 59, n. 4 (D.Utah 1987). The latest visitor information available shows that from January 1, 1996 to August 30, 1996, 1,937,933 people visited the GCNRA (information provided by telephone by National Park Service on October 16, 1996).

The goods and services rendered to the GCNRA and its visitors by Arizona through its taxpayers include, but are not limited to, providing marinas, gasoline, supplies, accommodations and restaurants, highways, electricity, law enforcement, water, health care, social services, and stocking of fish and management of wildlife. In addition, agreements between the National Park



Service (NPS) and various state and local agencies in Arizona pertain to a broad range of activities relating to wildlife, boating safety administration, the use of radio frequencies, investigative roles of NPS commissioned officers in relation to state and local agencies, use of Coconino County's sheriff's office radio frequency, use of Arizona lake improvement funds for construction of Wahweap visitor use facilities, deputization of Arizona public safety personnel as National Park Service Special Police Officers, and use of Arizona telecommunications sites. Appellants' Brief at 22, 23.

In order to pay for those services, Arizona collects a significant amount of sales, income, property and other taxes and fees from the business generated at the GCNRA. It also collects a substantial amount of revenue from the sales of hunting and fishing licenses and from the licensing of recreational watercraft and their trailers.

All or many of Arizona's vast interests at GCNRA may be significantly affected by the outcome of Appellants' appeal in this case; especially if Appellants are arguing that all state regulation in the GCNRA has been preempted. (See footnote 3, p. 6) If Appellants prevail in this appeal, the grand system of operation at GCNRA, including Lake Powell, may well be turned on its head. This system is complicated, involving many federal, state, and local governmental parties. Nevertheless, it is a system that has functioned smoothly and effectively in providing power, irrigation, and recreational resources for many years to millions of people.

Because Appellants are wrong, Arizona wants to help the Court by shedding additional light on the issues presented.

#### STATEMENT OF THE CASE

While the constitutionality of Arizona's watercraft registration fees is not at issue in this appeal, an explanation of how Arizona's watercraft registration system differs from that in Utah may be helpful.

Article 9, § 16 of the Arizona Constitution<sup>1</sup> specifically exempts all non-commercial watercraft from ad valorem property taxes. However, Arizona Revised Statutes, Annotated ("A.R.S.") Title 5, Article 3, §§ 5-321 - 324 (see Exhibit A), provides for the registration and taxation of watercraft. Briefly, all undocumented vessels<sup>2</sup> in Arizona are required to be numbered in compliance with rules and regulations of the Arizona Game and Fish Commission in accordance with the federally approved numbering system. A.R.S. § 5-322. The owner of each watercraft requiring numbering must obtain that registration decal from the Arizona Game

---

<sup>1</sup>Section 16: "Commencing January 1, 1967, all watercraft registered for operation in Arizona, excluding watercraft owned and operated for any commercial purpose, is exempt from ad valorem property taxes. Watercraft exempt from ad valorem property taxes shall be subject to or exempt from a license tax, as may be prescribed by law."

<sup>2</sup>Undocumented vessels are those under 5 net tons not registered under the laws of a foreign country. 46 U.S.C. § 12102. Recreational boats are undocumented vessels unless the owner applies for documentation with the Coast Guard. If a recreational boat is documented by the Coast Guard, it requires no further registration or numbering in Arizona. A.R.S. § 5-322(A).

and Fish Department. A registration fee of four dollars and a license tax of \$.45 per foot of length or fraction thereof up to and including eighteen feet and \$.68 per foot of length for each foot or fraction thereof over eighteen feet must be paid by Arizona residents. A.R.S. § 5-321(A)(1). Non-residents must pay a registration fee of ten dollars and a tax of \$1.45 per foot of length or fraction thereof up to and including eighteen feet and \$2.75 per foot of length for each foot or fraction thereof over eighteen feet. A.R.S. § 5-321(A)(2).

#### STATEMENT OF ADDITIONAL ISSUES PRESENTED FOR REVIEW

Arizona presents no additional issues for review.

#### SUMMARY OF THE ARGUMENT

Although Congress has enacted statutes and the federal executive branches have enacted regulations that, together, extensively govern activities in the GCNRA, the States of Arizona and Utah nevertheless still have authority to regulate recreational watercraft and other activities in the GCNRA when the States' laws and regulations do not conflict with federal regulations. The federal government has not preempted the boat registration laws of these States. There is no explicit statement by Congress that it intends to preempt state regulation, there is no conflict between the federal and state statutes and regulations, and the federal government has not occupied the field of interstate commerce in the GCNRA.

Moreover, Appellants have failed to demonstrate how Utah's boat registration statute violates the Interstate Commerce Clause. The statute regulates evenhandedly, it effects a legitimate local public interest, and it does not discriminate against interstate commerce either on its face or in its practical effect.

### ARGUMENT

#### I. BACKGROUND FACTS

With the following exceptions, Arizona does not dispute the background facts as asserted by Appellants in their brief at pages 4-10.

First, Arizona takes exception to the statement that, "Such services include those that are within the traditional police powers of the state." Appellants' Brief at 7. There is no elaboration of what those services are. Arizona believes it retains its police powers within the GCNRA, as is explained herein at page 12.

Arizona also questions the statement that, "The cost of boat registration in the defendant's state of residence are substantially less than the State of Utah's requirements and is also substantially less than the cost of registering with the United States Coast Guard." *Id.* at 8. Arizona is not aware of the cost to register Appellants' boats with the Coast Guard or in Appellants' state of residence.

. . . .

II. THE STATES OF ARIZONA AND UTAH HAVE AUTHORITY TO REGULATE RECREATIONAL BOATING WITHIN THE GLEN CANYON NATIONAL RECREATION AREA, AND THOSE STATES HAVE NOT BEEN PREEMPTED BY THE FEDERAL GOVERNMENT FROM DOING SO.

Appellants argue that Congress and the federal executive branch have preempted the State of Utah from regulating boat registration within the GCNRA because preemption has occurred through express congressional statement, a conflict between state and federal laws, and federal government occupation of the field of interstate commerce within the GCNRA.<sup>3</sup> Appellants' Brief at 10-17.

An analysis of Appellants' argument shows that it is built upon a foundation of sand and cannot stand.

A. Congress Made No Express Preemption Statement

The general rule is that the power of Congress to control and regulate navigation is supreme and exclusive as to all matters of national concern in which uniformity is essential, or to which Congress has already acted, and any state law that is repugnant to, or inconsistent with, an act of Congress on the subject is void.

---

<sup>3</sup>Arizona is unsure of the extent of Appellants' argument on the issue of preemption. Some statements made by Appellants could be taken to mean that they argue that all state laws and regulations on the GCNRA have been preempted, including boat registration laws. For example, Appellants state, "Congress has enacted a series of laws that extensively govern activities occurring within the Colorado River corridor and within the GCNRA, and the federal executive departments have promulgated extensive, detailed and broadly applied regulations, that cumulatively have displaced and preempted the operation of state laws within the GCNRA, including the boat registration laws." Appellants' Brief at 3. They also state, "There simply is no room for independent state action within the GCNRA." *Id.* at 24. For purposes of this amicus brief, however, Arizona takes the position that Appellants argue that the federal government has only preempted the area of boat registrations on the GCNRA.

*Harman v. City of Chicago*, 147 U.S. 396 (1893); *Moran v. City of New Orleans*, 112 U.S. 69 (1884); *Morgan v. Parham*, 83 U.S. 471 (1872); *Smith v. Turner*, 48 U.S. 283 (1849); *Gibbons v. Ogden*, 22 U.S. 1 (1824).

Notwithstanding the supremacy of the power of Congress to regulate navigation, the States may pass statutes that incidentally affect navigation and shipping and such statutes, except in matters where uniformity is essential, are valid and effective until Congress acts on the same subject. *Kelly v. State of Washington, ex rel, Foss Co.*, 302 U.S. 1 (1937); *Wilson v. McNamee*, 102 U.S. 572 (1880); *Gilman v. City of Philadelphia*, 70 U.S. 713 (1865); *Smith v. Maryland*, 59 U.S. 71 (1855).

For a finding of an intent to preempt, a clear and manifest statement of purpose is "always required." *Puerto Rico Dept. of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988).

Appellants cite the Federal Boat Safety Act, 46 U.S.C. §§ 4301, et seq., and 46 U.S.C. §§ 13101, et seq., and then state, "Congress expressly barred states from enforcing their own recreational vessel performance and safety standards." Appellants' Brief at 12-13. Appellants also state, "Nothing in the Federal boat safety laws, the Coast Guard laws and regulations or the laws administered by the Secretary of the Interior confer jurisdiction upon the states to regulate boating activities within the GCNRA." Appellants' Brief at 14. Nothing could be further from the truth. In fact, 46 U.S.C. § 4306, states just the opposite:

section 4305 of this title, a State or political subdivision of a State may not establish, continue in effect, or enforce a law or regulation establishing a recreational vessel or associated equipment performance or other safety standard or imposing a requirement for associated equipment (except insofar as the State or political subdivision may, in the absence of the Secretary's disapproval, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within the State) that is not identical to a regulation prescribed under section 4302 of this title.

This section allows States to enforce their laws or regulations in at least two different situations. First, States may pass and enforce recreational vessel or associated equipment performance or other safety standards which are identical to a regulation prescribed under 46 U.S.C. § 4302. Second, States may, in some instances, regulate the carrying or use of marine safety articles to meet uniquely hazardous conditions or circumstances within that State. Contrary to Appellants' statement, this section hardly bars states from enforcing their own recreational vessel performance and safety standards.

In *State v. Nettleton*, 367 So.2d 755 (La. 1979), defendants argued that the predecessor to 46 U.S.C. § 4306, 46 U.S.C. § 1459,<sup>4</sup>

---

<sup>4</sup>"Sec. 1459. Federal preemption in issuance of standards:

Unless permitted by the Secretary under section 1458 of this title, no State or political subdivision thereof may establish, continue in effect, or enforce any provision of law or regulation which establishes any boat or associated equipment performance or other safety standard, or which imposes any requirement for associated equipment, except, unless disapproved by the Secretary, the carrying or using of marine safety articles

preempted the field of boat safety that the state statutes they were cited for purported to regulate. However, the court stated:

Defendants' initial argument that the Federal Boat Safety Act preempts the field of boating safety on the navigable waters of the State of Louisiana has no merit. The Federal Statute, 46 U.S.C.A., Sec. 1459, expressly provides that the states may establish boat safety regulations, so long as they are identical to the federal regulations.

367 So.2d at 759.

In addition, another provision in the Federal Boat Safety Act, 46 U.S.C. § 13101, contains the following language:

(a) To encourage greater State participation and uniformity in boating safety and facility improvement efforts, and particularly to permit the States to assume the greater share of boating safety education, assistance, and enforcement activities, the Secretary shall carry out a national recreational boating safety and facilities improvement program.

(Emphasis added.)

Such statements as these can hardly be considered explicit statements by Congress that it intended to preempt the enforcement of state laws and regulations for boat registration and regulation in the GCNRA. To the contrary, they are explicit statements by Congress that state laws and regulations to regulate boating activities will be encouraged and enforceable, so long as they do not conflict with federal regulations.

---

to meet uniquely hazardous conditions or circumstances within the State, which is not identical to a Federal Regulation issued under section 1454 of this title. Pub. L. 92-75 Sec. 10 Aug. 10, 1971, 85 Stat. 217.



**B. No Conflict Exists Between State and Federal Statutes and Regulations in The GCNRA**

Appellants argue that there is a direct conflict of federal and state laws in the area of boat numbering and registration. They point out that 36 C.F.R. § 3.1 requires an identification number to be displayed on the hull of each vessel operated within the GCNRA, and allege that this requirement directly conflicts with Utah's requirement that every such boat have both the identification number either issued by the Coast Guard or by the State, and a certificate from the county assessor that the owner has paid the property tax on the boat. Appellants' Brief at 15. Again, Appellants are mistaken.

These federal and state statutes and regulations do not conflict. Just the opposite is true. They work in harmony with each other as they were intended. In fact, they provide Utah explicit authority for the tax here in question.

The Federal Boat Safety Act addresses the numbering of undocumented vessels. All undocumented vessels are required to have a number issued by the proper issuing authority in the State in which the vessel is principally operated. 46 U.S.C. § 12301. The U.S. Secretary of Transportation prescribes a standard numbering system and approves state numbering systems consistent with the standard numbering system. A State with an approved numbering system is the "issuing authority" for the issuance of the numbers. When a vessel is numbered in a State, it is deemed in compliance with the numbering system of that State. 46 U.S.C. §

12302. Federal law provides specific authority for the Utah property tax:

The authority issuing a number under this chapter [a state with an approved numbering system] may prescribe regulations and establish fees to carry out the intent of this chapter. The fees shall apply equally to residents and nonresidents of the State. *A State issuing authority may impose only conditions for vessel numbering that are -*

(1) prescribed by this chapter or regulations of the Secretary about the standard numbering system; or

(2) *related to proof of payment of State or local taxes.*

46 U.S.C. § 12307 (emphasis added).

Thus the laws and regulations work in harmony; not in conflict. Numbering of undocumented vessels is required by federal regulation. States whose numbering systems are approved are the issuing authority for the federally required vessel numbers. Vessel numbers issued by approved States are deemed in compliance with the numbering requirement, or registration requirement, of that State. Approved States may prescribe regulations and establish fees to accomplish the numbering. A condition for vessel numbering, or registration, must be related to proof of payment of state or local taxes or compliance with the law or regulations of the Secretary of Transportation.

If Appellants prevail in this appeal, this harmonious and effective system of numbering and registration throughout the State

. . .

. . .

of Arizona, not just in GCNRA, will be turned on its head. Others may choose to argue that the provisions of the Federal Boat Safety Act will no longer govern in this area.

The Commerce Clause in no way relieves or obstructs the States in the exercise of their police power. *Riis v. Commonwealth*, 418 S.W.2d 396 (Ky.1967). Although most exercises of the police power affect interstate commerce to some degree, not every exercise is invalid under the Commerce Clause. *American Can Co. v. Oregon Liquor Control Comm'n*, 517 P.2d 691 (Or. App. 1974). State regulation, based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity, may constitutionally stand. *Head v. New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424 (1963); *Huron Portland Cement Co. v. City of Detroit, Michigan*, 362 U.S. 440 (1960).

Utah has done nothing more than exercise its police power to regulate boat registrations by way of payment of property taxes on those boats. Those taxes do not impinge upon the authority of Congress to regulate interstate commerce.

C. The Federal Government Has Not Occupied The Field of Interstate Commerce Within The GCNRA

Appellants' argument on this point has little or nothing to do with interstate commerce. They simply argue that because of the overall pervasive regulatory scheme imposed by the federal government on the GCNRA, it appears as though Congress "left no room" for additional state or local laws. Appellants' Brief at 17-18. After citing several cases, Appellants conclude with the

bald assertion that, "There simply is no room for independent state action within the GCNRA. Any state action must depend upon cooperative independent agreements with the Department of the Interior and Transportation agencies." *Id.* at 24.

Even if, for the sake of argument, any state action must depend upon independent agreements with federal agencies,<sup>5</sup> and that circumstance alone amounts to federal government occupation of the field of interstate commerce on the GCNRA, Appellants fail to demonstrate how the States of Utah and Arizona are attempting to regulate interstate commerce in violation of federal regulation.<sup>6</sup>

Moreover, Appellants' entire premise is incorrect that state activities in the GCNRA are entirely dependent upon agreements with the federal agencies. Appellants continue to ignore the plain language and meaning of the congressional acts referred to earlier herein which clearly give States independent powers to regulate boat registrations and other activities in the GCNRA.

Appellants believe that, in general, uniformity of laws does not exist on the Colorado River and Lake Powell and that this confusion does not lead to an advancement of national interests.

---

<sup>5</sup>Of course, independent agreements by the States are not required. The States enter such agreements pursuant to their sovereign powers.

<sup>6</sup>In fact, Appellants have failed to demonstrate that this case even involves interstate commerce. Generally speaking, anything that can be bought and sold is a subject of commerce. *Kansas City v. Seaman*, 99 Kan. 1431, 160 P. 1139 (1916); *Austin v. State of Tennessee*, 179 U.S. 343 (1900). Apparently, Appellants believe recreational boating is an article of commerce; a dubious assumption.

*Id.* They again fail to demonstrate how the laws are not uniform or how the laws conflict. Indeed, as argued in this brief, the laws are uniform with regard to boat regulation on the GCNRA, and have contributed to the national interests since the creation of the GCNRA, as evidenced by the continued growth in tourism and recreation in the area.

III. APPELLANTS HAVE FAILED TO DEMONSTRATE THAT UTAH'S BOAT REGISTRATION STATUTE VIOLATES THE INTERSTATE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

Appellants argue that Utah's boat registration requirement that property taxes on recreational boats be paid before the boat owner may use the waters of Lake Powell violates the Interstate Commerce Clause. Appellants' Brief at 27. They say the tax imposes a substantially greater burden on Utah's boaters than adjacent States' boat registration laws impose on residents of those States, *id.* at 31, and that the tax is clearly excessive in relation to local benefits. *Id.* at 33.

Again, an analysis of Appellants' arguments shows that they are wrong.

A. Appellants Have Failed to Demonstrate That the Utah Tax Impermissibly Interferes with Interstate Commerce

The Constitution gives Congress the power to regulate foreign and interstate commerce. U.S. Const. Art. I, § 8. Courts have ruled that States cannot regulate in a manner that unduly burdens or discriminates against interstate commerce unless Congress has

authorized the burden.<sup>7</sup> See *Exxon Corp. v. Governor of Maryland*, 437 U.S. 609 (1981). Nondiscriminatory state or local regulations with only incidental effects on interstate commerce are valid unless "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Under this test, the burden on interstate commerce must "clearly outweigh" legitimate state interests, and the statute must be "even-handed" in its treatment of in-state and out-of-state residents to survive. See *Arkansas Elec. Co-op. Corp. v. Arkansas Pub. Service Comm'n*, 461 U.S. 375, 393-94 (1983); *Bruce Church*, 397 U.S. at 142. Dormant Commerce Clause analysis in cases where no discrimination is involved is an intricate balancing process, the object of which is to determine whether the state law is "unduly" burdensome. See *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981); *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981).

Appellants have not alleged facts which demonstrate how Utah's tax has affected interstate commerce. Utah's tax to register a recreational boat is higher than in other adjacent States. However, Appellants fail to demonstrate how that fact is unduly burdensome to interstate commerce. There is no demonstrated effect on the movement of goods and services between States as the result of the tax, as was the case in *Bibb v. Navajo Freight Lines*, 359 U.S. 520 (1959), cited by Appellants. Appellants have not even

---

<sup>7</sup>This is known as the "negative" or "dormant" Commerce Clause.

demonstrated whether Utah's tax has resulted in fewer boat registrations in Utah, assuming for the sake of argument that fact is relevant to an interstate commerce argument. Moreover, the tax is evenhanded because it is the same for a resident as for a non-resident of Utah.

The only thing that Appellants have alleged is that Utah's boater registration requirements vary so much from States adjacent to Lake Powell "that Utah's registration law must be found to impermissibly burdens (sic) interstate commerce when Utah's law is applied on Lake Powell or within the GCNRA." Appellants' Brief at 33. This leap of logic hardly tips the scales in favor of the tax being unduly burdensome on interstate commerce.

**B. Appellants Have Not Demonstrated That Utah's Tax Is Clearly Excessive In Relation To Local Benefits**

Appellants' argument on this point is unclear as it makes no specific allegations as to how the Utah tax is clearly excessive in relation to local benefits.

As the trial judge correctly noted in his Ruling on Motion to Dismiss:

Property taxes are collected to support the general function of government, not the enforcement of particular laws. The State of Utah has an obligation to provide general government services, such as law enforcement, social services, and education, within GCNRA. It is not required to demonstrate a direct *quid pro quo* relationship between revenues and expenditures.

Arizona assumes that when Appellants are in Utah to use their boats they also take advantage of the general government services paid for in part by the Utah property taxes on their boats.

Appellants have failed to tip the scales in their favor by showing that the tax is "clearly excessive" in relation to those services.

### CONCLUSION

The States of Utah and Arizona have not been preempted by the federal government from jurisdiction to regulate boating in the GCNRA, including the registration of boats. Utah's property tax on boats does not conflict with Congress' regulation of interstate commerce on Lake Powell, and, in fact, complies with 46 U.S.C. § 12307. The laws of both Arizona and Utah regarding registration and numbering of watercraft in those States works in harmony with federal laws and regulations.

Moreover, Appellants have not demonstrated that the Utah tax violates the Interstate Commerce Clause. The tax does not impermissibly interfere with the movement of goods and services, and there are no facts to show that it is excessive in relation to local benefits it provides to the Appellants.

The regulation of recreational vessels in the GCNRA, including their registration, by the States of Arizona and Utah work in harmony with federal regulation, and have done so since 1972. To grant the relief requested by the Appellants would upset the current, effective and lawful system, and throw this critical area into chaos in the GCNRA as well as other areas of Arizona and Utah, and in many other states.

The relief requested by Appellants should be denied.

. . . .



RESPECTFULLY SUBMITTED this 23 day of October, 1996.

GRANT WOODS, ATTORNEY GENERAL  
Jay R. Adkins, Assistant Attorney  
General, State Bar of Arizona #C02477  
Office of the Arizona Attorney General  
Environmental Enforcement Section  
1275 W. Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 542-7781  
Facsimile: (602) 542-4084

---

Jay R. Adkins, Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of October, 1996, an original and seven true and accurate copies of the foregoing AMICUS CURIAE BRIEF of the State of Arizona, in support of Plaintiff/Appellee were mailed via United States Mail, First Class, Postage Prepaid, to the Utah Court of Appeals and two copies of same were mailed via United States Mail, First Class, Postage Prepaid, to each of the following:

Norman K. Johnson, Esquire  
Assistant Attorney General  
Utah Attorney General's Office  
1636 W. North Temple, Ste. 300  
Salt Lake City, Utah 84116  
Attorneys for Plaintiff/Appellee

Craig C. Hallis, Esquire  
San Juan County Attorney  
297 South Main Street  
Post Office Box 850  
Monticello, UT 84535  
Attorneys for Plaintiff/Appellee

and

R. Dennis Ickes (1615)  
Parry Murray & Ward  
1270 Eagle Gate Plaza  
60 East South Temple  
Salt Lake City, Utah 84111  
Attorneys for Defendants/Appellants

RESPECTFULLY SUBMITTED this 23 day of October, 1996.

GRANT WOODS  
Arizona Attorney General


  
\_\_\_\_\_  
Jay R. Adkins  
Assistant Attorney General

EXHIBIT A

(A.R.S. §§ 5-321- 322 - Registration and Taxation of Watercraft)

### ARTICLE 3. REGISTRATION AND TAXATION OF WATERCRAFT

#### 5-321. Numbering; registration fees; license tax; repeal of registration; penalty; procedures

A. The owner of each watercraft requiring numbering by this state shall file an application for a registration number with the department, or its agent, on forms approved by it. The application shall be signed by the owner of the watercraft and shall be accompanied by a registration fee and a license tax levied at the following rates:

1. For a resident owner, defined as a person who owns a boat for which registration is required and who is required to and does register motor vehicles owned by him in this state or, if no motor vehicle is owned by the person owning the boat, the person is a resident as defined by section 28-102, a registration fee of four dollars and a license tax of forty-five cents per foot of length or fraction thereof of each watercraft up to and including eighteen feet and sixty-eight cents per foot of length for each foot or fraction thereof over eighteen feet except as provided in section 5-322.

2. For a nonresident owner, defined as any person who owns a boat for which registration is required and who is not a resident owner as defined by this section, a registration fee of ten dollars and a license tax of one dollar forty-five cents per foot of length or fraction thereof of each watercraft up to and including eighteen feet and two dollars seventy-five cents per foot of length for each foot or fraction thereof over eighteen feet except as provided in section 5-322.

B. The length of the watercraft shall be measured from the most forward part of the bow excluding the bowsprit or jibboom, over the centerline to the rearmost part of the transom excluding sheer, outboard motor, rudder, handles or other attachments.

Upon receipt of the application in approved form, the department shall enter the same upon the records of its office and issue to the applicant two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals in such manner as may be prescribed by rules of the commission. The number and decals shall be maintained in legible condition. The certificate of number, except as provided in section 5-371, shall be available at all times for inspection by a peace officer whenever the watercraft is in operation. No number issued by another state or the United States coast guard, unless granted exemption or exception pursuant to this chapter, shall be displayed on the watercraft.

C. No watercraft shall be purchased, sold or otherwise transferred without assignment by the owner of the current numbering certificate or other documentation as may be prescribed by rules of the commission. Within fifteen days after such transfer, the person to whom such transfer is made shall make application to the department to have the watercraft registered in his name by the department, for which the department shall charge a transfer fee of four dollars. The department shall not issue or transfer a numbering certificate for a watercraft to a person who is subject to the use tax under title 42, chapter 8, article 2 unless the applicable tax has been paid as shown by a receipt from the collecting officer. Persons doing business as marine dealers and licensed as such by this state are not required to register in their name any watercraft in their possession that may be offered for resale.

D. In the event of the loss or destruction of the certificate of number or annual decal, the department shall issue a duplicate thereof to the owner upon payment of a fee of two dollars.

E. The department may issue any certificate of number directly or may authorize any person to act as agent for the issuance thereof in conformity with this chapter and with any rules of the commission.

F. The owner shall furnish to the department notice of the transfer of all or any part of his interest other than the creation of a security interest in a watercraft numbered in this state pursuant to the provisions of this chapter or of the destruction or abandonment of such watercraft within fifteen days. Such transfer, destruction or abandonment shall terminate the certificate of number of such watercraft, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such watercraft, the transfer shall not terminate the certificate of number.

G. Any holder of a certificate of number shall notify the department within fifteen days if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department with his new address. The commission may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

H. On renewal of any watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft was not registered subsequent to the expiration date. The commission shall establish the penalty which shall not exceed fifteen dollars. If more

date of the last registration or renewal the penalty is waived.

1994

#### 5-321.01. Staggered watercraft registration; rules

A. The commission shall establish a system of staggered registration on a monthly basis in order to distribute the work of registering watercraft as uniformly as practicable throughout the twelve months of the calendar year.

B. All watercraft registrations provided for in this article expire in accordance with the schedules established by the commission. The commission may set the number of renewal periods within a month from one each month to one each day depending on which system is most economical and best accommodates the public.

C. The commission, in order to initiate the staggered registration system, may register a watercraft for a period of greater or less than twelve months up to a period of eighteen months. If a registration period is set for a period other than twelve months the commission may prorate the registration fee and license tax.

D. The commission shall promulgate rules necessary to accomplish the purposes of this section. 1982

#### 5-322. Watercraft to be numbered; exemptions; exceptions

A. All undocumented watercraft whether underway, moored or anchored on the waters within the boundaries of the state shall be numbered in accordance with this chapter or by rules and regulations of the commission in accordance with the federally approved numbering system except:

1. Foreign watercraft temporarily using the waters of the state.

2. Military or public vessels of the United States, except recreational type public vessels.

3. Watercraft used solely as life boats.

4. Undocumented watercraft operating under a valid temporary certificate issued pursuant to the regulations prescribed by the commission.

B. Watercraft owned and operated exclusively by the state or by any political subdivision thereof shall be numbered, but no tax or registration fee shall be paid thereon.

C. All nonresident owners of watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the United States coast guard, a state, the Commonwealth of Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department prior to the expiration of the reciprocity period prescribed by the regulations of the commission.

D. All nonresident-owned watercraft, when in the course of interstate operation and not required to be numbered in their state of principal use, shall comply with the requirements of subsection C of this section.

E. Except as provided in subsection F of this section, any person who is a resident of this state and is the owner of a watercraft shall number such watercraft pursuant to § 5-321 prior to operating such watercraft on the waterways of the state.

F. When this state becomes the new state of principal use of a watercraft displaying a current number issued under a federally approved numbering system, the validity of such number shall be recognized for a period of ninety days. Upon expiration of the ninety-day period and prior to any subsequent

G. Each dealer or manufacturer in this state engaged in the sale of watercraft using such watercraft for demonstration shall obtain one or more dealer watercraft certificates of number with the current validating decals. Applications, renewal and display of certificates of number shall be as prescribed in this chapter or by regulations of the commission, except that the annual fee will be two dollars fifty cents for each certificate of number and accompanying current decals.

H. Owners of commercial watercraft not exempted from the ad valorem property taxes under the provisions of article 9, section 16 of the Arizona Constitution shall be exempt from the lieu tax requirements of § 5-321 of this chapter.

1973